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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/225,537	01/04/1999	PHILIP MYRON GINSBERG	1453-001C	2363

7590 05/13/2002

ATTEN: MATTHEW T. BYRNE  
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1251 AVENUE OF THE AMERICAS  
NEW YORK, NY 10020-1104

EXAMINER

AKERS, GEOFFREY R

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 05/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

59/225537

Applicant(s)

Gindley

Examiner

Aher, G

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 4/10/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 32-80 is/are pending in the application.  
Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 32-80 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 24
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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## DETAILED ACTION

### *Response to Request for Continued Examination*

1. This action is responsive to Applicant's Request for Continued Examination(RCE)(Paper #22) filed 4/10/02.
2. Applicant cancelled claims 17-31 and added new claims 32-80.
3. New claims 32-80 are pending.

### *Double Patenting*

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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5. New claims 33,36,39,42,45,49,52,55,58,62,65,69,76 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 of Ginsberg(US Pat No: 5,857,176). Furthermore, new claims 35,41,44,48,51,54,57,60,63,67,71,75,80 are also rejected under this judicially created doctrine of obviousness-type double patenting as being

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unpatentable over claims 1,7,10 of Ginsberg(US Pat. No: 5,857,176). Although the conflicting new claims are not identical, they are not necessarily patentably distinct from each other.

6. New claims 47,64,68,74,78 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-3 of Ginsberg(US Pat No: 5,774,880). Furthermore, new claims 34,37,40,43,50,53,56,59,66,70,77 are also rejected under this judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 5 of Ginsberg(US Pat. No: 5,774,880) as well as new claims 38,41,44,47,51,57,60,64,68,71,74,78 being also rejected under this doctrine of double patenting as unpatentable over claim 6 of Ginsberg(US Pat. No: 5,774,880). Although the conflicting claims are not identical, they are not necessarily patentably distinct from each other.

### ***Conclusion***

#### **7. THIS ACTION IS MADE NON-FINAL.**

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8. Any questions concerning this communication should be addressed to the examiner of record, Dr. Geoffrey Akers, P.E., who can be reached between 6:30 AM and 5:00 PM Monday through Friday at 703-306-5844. If attempts to contact the examiner are unsuccessful, the examiner's superior, Mr. Vincent Millin, SPE, may be telephoned at (703)-308-1065.

The fax number for Formal or Official faxes and Draft or Informal faxes to Technology Center 3600 or this Art Unit is (703)-872-9326 or 9327. Any inquiry of a general nature or

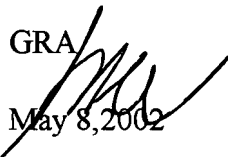
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relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)-308-1113.

GRA

  
May 8, 2002